



SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA-2015-0077]

Requiring Electronic Access to the Electronic Folder by Certain Claimant Representatives

AGENCY: Social Security Administration

ACTION: Notice; Implementation of requirement

SUMMARY: This notice provides advance notification of the requirement that, for claims with certified electronic folders pending at the hearing or Appeals Council levels, an appointed representative must access and obtain a claimant's folder through Appointed Representative Services (ARS) in matters for which the representative requests direct fee payment. Except under the limited circumstances described in this notice, we will no longer provide compact disc (CD) copies of the electronic folder to appointed representatives who request direct payment of fees. We are implementing this requirement to improve administrative efficiency, ensure that representatives can provide the best possible service to claimants by using the most up-to-date information in the claim(s) folder, and manage the unprecedented workload pending in the Office of Disability Adjudication and Review (ODAR).

DATES: Effective Date: This notice is effective [INSERT DATE 120 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Maren Weight, Office of Disability

Adjudication and Review, Social Security Administration, 5107 Leesburg Pike, Falls Church, VA 22041, (703) 605-7100, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

For general information or inquiries about the electronic folder, please write to the Office of Electronic Services and Strategic Information, 5107 Leesburg Pike, Suite 1509, Falls Church, VA 22041.

SUPPLEMENTARY INFORMATION:

Requiring Electronic Access of the Claimant's Certified Electronic Folder

On September 12, 2011, we published final rules that require appointed representatives to conduct business with us electronically at the times and in the manner we prescribe on matters for which the representative requests direct fee payment.¹ At that time, we did not require representatives to use any specific electronic service. Rather, in the preamble to that final rule, we stated, "Once we determine that we should make a particular electronic service publicly available because it works well, we will publish a notice in the Federal Register. The notice will contain the new requirement(s) and a list of all established electronic service requirements."²

We implemented ARS nationally at the hearing level in November 2010, and, due to its successful application at the hearing level, expanded representative access at the Appeals Council level in June 2011. In part, ARS permits an appointed representative to examine an electronic folder online, download material from the electronic folder, and upload new evidence to the electronic folder in real time. Utilization of ARS has benefited both claimants and representatives, and has improved our efficiency and reduced our costs in associating incoming medical evidence and other information with a folder.

To ensure efficient processing, it also is important that representatives use the most up-to-date claims folder. Use of ARS to access the claims folder assists the representative to prepare

¹ See 76 FR 56107 at <https://www.gpo.gov/fdsys/pkg/FR-2011-09-12/pdf/2011-23232.pdf>

² Id.

for a hearing and also positively affects administrative processes for both the representative and the agency. To illustrate, a representative who accesses a folder through ARS is able to determine immediately whether evidence he or she submitted is missing from the folder, and, if the evidence is not associated, the representative can take steps immediately to address the issue, rather than later when the evidence's absence could delay the hearing. Additionally, a representative who uses ARS can immediately access the status of cases pending at the hearing and Appeals Council levels, which saves the representative a lot of time in determining status and significantly reduces the number of inquiries received by ODAR offices. Due to the unprecedented workload currently pending in ODAR, time and resource savings such as this are vital to our operations. When a representative uses ARS for these types of tasks, hearing office staff has more time to perform other tasks needed to prepare for and schedule hearings.

Therefore, 120 days after the date of publication of this notice in the Federal Register, we will begin mandating the use of ARS at the hearings and Appeals Council levels by appointed representatives who request direct payment of the authorized fee, with a few exceptions as described below. We are providing a 120-day window to give any representative who is not currently registered for ARS, but would now like to do so, sufficient time to contact us and register for ARS. (For registration information, see Additional Information section below). After the 120-day window, we will no longer burn encrypted CD copies of the electronic folders for affected appointed representatives, as more fully described below. However, this requirement applies only to cases at the hearings and Appeals Council levels because we have not yet provided electronic folder access at the initial and reconsideration levels. Additionally, this requirement applies only to cases under Title II or Title XVI of the Social Security Act (Act) in which the official claim(s) folder is electronic.

In implementing this requirement, we acknowledge a systems limitation in providing electronic folder access through ARS when a claimant has appointed multiple representatives. Currently, in multiple representative situations, only the individual who is designated as the principal representative is able to access a claimant's electronic folder through ARS. Under this mandate, if the principal representative requests direct payment of fees, he or she must use ARS to access the electronic folder, and SSA will not provide this representative CDs of the electronic folder upon request. Since non-principal representatives cannot currently access the electronic folder in multiples representative situations, the new mandate described in this notice does not apply to a non-principal representative. However, when the mandate applies to the principal representative, we will not provide CDs of the electronic folder to other appointed representatives who associate themselves with the principal representative by using the same Employer Identification Number (EIN) as the principal representative when requesting direct payment of fees on that case. (Representatives currently identify case-specific EINs for direct fee payment purposes via Form SSA-1695, Identifying Information for Possible Direct Payment of Authorized Fees). Instead, we expect these representatives to make arrangements with the principal representative to obtain copies of the claimant's folder, if they need to view it. If requested, we will continue to provide CDs of the electronic folder to appointed representatives on the case who are not associated with the same EIN identified by the principal representative, regardless of whether these representatives request direct fee payment.

Additionally, we acknowledge there will be a few situations where case characteristics, our systems, or other technology limitations preclude access to the electronic folder through ARS. For example, if a request for review is pending at the Appeals Council level on a prior

claim, and a subsequent application is pending at the hearing level, our system will not allow a representative to access one or both of the electronic folders. Also, if a case has been closed for more than 90 days after a final action or if the Appeals Council establishes a new court case, an appointed representative cannot access the electronic folder through ARS. In these types of situations, we will continue to work with the representative to provide a CD copy of the electronic folder when requested.

We will also provide an exception to those representatives who show that they are unable to register for ARS due to technological issues outside of our control or the control of the representative (e.g., no cell phone coverage available to receive text messages in the area where the representative's office is located).

A representative who falls under the terms of this mandate, as described, has an affirmative duty to comply with this requirement. We may investigate to determine if a representative violates this duty or is attempting to circumvent our rules. We may sanction a representative who does not follow these rules, as described in 20 CFR 404.1745-1795 and 416.1545-1595. However, we will not reject or delay a claimant's hearing or process a claim differently if a representative fails to comply with this electronic access requirement.

Claimants, whether they are represented or not, and representatives who are not eligible for or who do not request direct payment of fees in a case, may receive a CD copy of the claimant's electronic folder.

Additional Information

Additional information is available on our Representing Social Security Claimants website at <http://www.ssa.gov/representation/>. Instructions for requesting access to the electronic folder can be found at <https://www.socialsecurity.gov/representation/eFolder.htm>. Representatives can register for electronic access at <https://secure.ssa.gov/acu/IRESWeb/registrationAttestation.do>.

Dated: March 30, 2016

Carolyn W. Colvin,
Acting Commissioner of Social Security

[FR Doc. 2016-08162 Filed: 4/15/2016 8:45 am; Publication Date: 4/18/2016]